

AMENDED IN SENATE AUGUST 17, 2009

AMENDED IN SENATE JULY 14, 2009

AMENDED IN SENATE JULY 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1340**

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**Introduced by Assembly Members Bonnie Lowenthal and  
V. Manuel Perez**

**(Coauthor: Assembly Member Fletcher)**  
(Coauthors: Senators Ducheny and DeSaulnier)

February 27, 2009

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An act to amend Sections 3102, 3103, and 3103.5 of, and to add Sections 3103.6 and 3103.7 to, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 1340, as amended, Bonnie Lowenthal. Special absentee voters.

Existing law provides that every voter, including a special absentee voter who is temporarily living outside of the United States or is called for military service within the United States, must return his or her ballot to the appropriate elections official by the close of the polls on election day to have that ballot counted.

This bill would give a special absentee voter who is temporarily living outside of the territorial limits of the United States or the District of Columbia, or who is called for military service within the United States on or after the final date to apply for a vote by mail ballot, ~~5~~ 6 days after the election to return his or her ballot by mail to the appropriate elections official and have it counted. This bill would require an elections official, not later than 30 days following the certification of each election, to report to the Secretary of State information regarding

the number of applications for absentee ballots, the number of absentee ballots delivered, and the number of absentee ballots received before and after election day. The Secretary of State would then have 45 days following the certification of the election to compile the information received and report to the appropriate policy committees of each house of the Legislature.

Because this bill would change the duties of elections officials, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 3102 of the Elections Code, as amended  
2 by Section 1 of Chapter 252 of the Statutes of 2008, is amended  
3 to read:

4 3102. (a) Applications for the ballots of special absentee voters  
5 shall be received and, except as provided in Sections 3103.5 and  
6 3103.6, the ballots shall be received and canvassed under the same  
7 procedure as vote by mail ballots, insofar as that procedure is not  
8 inconsistent with this chapter.

9 (b) This section shall remain in effect only until January 1, 2011,  
10 and as of that date is repealed, unless a later enacted statute, that  
11 is enacted before January 1, 2011, deletes or extends that date.

12 SEC. 2. Section 3102 of the Elections Code, as amended by  
13 Section 2 of Chapter 252 of the Statutes of 2008, is amended to  
14 read:

15 3102. (a) Applications for the ballots of special absentee voters  
16 shall be received, and the ballots shall be received and canvassed  
17 under the same procedure as vote by mail ballots, insofar as that  
18 procedure is not inconsistent with this chapter.

19 (b) This section shall become operative January 1, 2011.

1 SEC. 3. Section 3103 of the Elections Code, as amended by  
2 Section 3 of Chapter 252 of the Statutes of 2008, is amended to  
3 read:

4 3103. (a) Any application made pursuant to this chapter that  
5 is received by the elections official prior to the 60th day before  
6 the election shall be kept and processed on or after the 60th day  
7 before the election.

8 (b) The elections official shall immediately send the voter a  
9 ballot in a form prescribed and provided by the Secretary of State.  
10 The elections official shall send with the ballot a list of all  
11 candidates who have qualified for the ballot by the 60th day before  
12 the election and a list of all measures that are to be submitted to  
13 the voters and on which the voter is qualified to vote. The voter  
14 shall be entitled to write in the name of any specific candidate  
15 seeking nomination or election to any office listed on the ballot.

16 (c) Notwithstanding Section 15341 or any other provision of  
17 law, any name written upon a ballot for a particular office pursuant  
18 to subdivision (b) shall be counted for the office or nomination,  
19 providing the candidate whose name has been written on the ballot  
20 has, as of the date of the election, qualified to have his or her name  
21 placed on the ballot for the office, or has qualified as a write-in  
22 candidate for the office.

23 (d) Except as provided in Sections 3103.5 and 3103.6, the  
24 elections official shall receive and canvass special absentee voter  
25 ballots described in this section under the same procedure as vote  
26 by mail ballots, insofar as that procedure is not inconsistent with  
27 this section.

28 (e) In the event that a voter executes a special absentee ballot  
29 pursuant to this section and an application for a vote by mail ballot  
30 pursuant to Section 3101, the elections official shall cancel the  
31 voter's permanent vote by mail status, and process the application  
32 in accordance with Chapter 1 (commencing with Section 3000).

33 (f) Notwithstanding any other provision of law, a special  
34 absentee voter who qualifies pursuant to this section may, by  
35 facsimile transmission, register to vote and apply for a special  
36 absentee ballot or a vote by mail ballot. Upon request, the elections  
37 official may send to the qualified special absentee voter either by  
38 mail, facsimile, or electronic transmission the special absentee  
39 ballot or, if available, a vote by mail ballot pursuant to Chapter 1  
40 (commencing with Section 3000).

(g) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 4. Section 3103.5 of the Elections Code is amended to read:

3103.5. (a) (1) A special absentee voter who is temporarily living outside of the territorial limits of the United States or the District of Columbia, or is called for military service within the United States on or after the final date to make application for a special absentee ballot or a vote by mail ballot, may return his or her ballot by facsimile transmission. To be counted, the ballot returned by facsimile transmission must be received by the voter's elections official no later than the closing of the polls on election day and must be accompanied by an identification envelope containing all of the information required by Section 3011 and an oath of voter declaration in substantially the following form:

OATH OF VOTER

I, \_\_\_\_\_, acknowledge that by returning my voted ballot by facsimile transmission I have waived my right to have my ballot kept secret. Nevertheless, I understand that, as with any vote by mail voter, my signature, whether on this oath of voter form or my identification envelope, will be permanently separated from my voted ballot to maintain its secrecy at the outset of the tabulation process and thereafter.

My residence address is \_\_\_\_\_.  
(Street Address) (City) (ZIP Code)

My current mailing address is \_\_\_\_\_.  
(Street Address) (City) (ZIP Code)

My e-mail address is \_\_\_\_\_. My facsimile transmission number is \_\_\_\_\_.

I am a resident of \_\_\_\_\_ County, State of California, and I have not applied, nor intend to apply, for a vote by mail ballot from any other jurisdiction for the same election.

1 I declare under penalty of perjury under the laws of the State of California  
2 that the foregoing is true and correct.

3  
4 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

5  
6 (Signature)\_\_\_\_\_

7 Voter (Power of Attorney Cannot be Accepted)

8  
9 YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE  
10 ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND  
11 IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED  
12 BY FACSIMILE TRANSMISSION.

13  
14 (2) Notwithstanding the voter's waiver of the right to a secret  
15 ballot, each elections official shall adopt appropriate procedures  
16 to protect the secrecy of ballots returned by facsimile transmission.

17 (3) Upon receipt of a ballot returned by facsimile transmission,  
18 the elections official shall determine the voter's eligibility to vote  
19 by comparing the signature on the return information with the  
20 signature on the voter's affidavit of registration. The ballot shall  
21 be duplicated and all materials preserved according to procedures  
22 set forth in this code.

23 (4) Notwithstanding paragraph (1), a special absentee voter who  
24 is permitted to return his or her ballot by facsimile transmission  
25 is, nonetheless, encouraged to return his or her ballot by mail or  
26 in person if possible. A special absentee voter should return a ballot  
27 by facsimile transmission only if doing so is necessary for the  
28 ballot to be received before the close of polls on election day.

29 (b) This section shall remain in effect only until January 1, 2011,  
30 and as of that date is repealed, unless a later enacted statute, that  
31 is enacted before January 1, 2011, deletes or extends that date.

32 SEC. 5. Section 3103.6 is added to the Elections Code, to read:

33 3103.6. A special absentee voter who is temporarily living  
34 outside of the territorial limits of the United States or the District  
35 of Columbia, or is called for military service within the United  
36 States on or after the final date to make application for a vote by  
37 mail ballot, may return his or her ballot by mail. To be counted,  
38 the ballot shall meet both of the following criteria:

39 (a) Be postmarked on or before election day.

(b) Be received by the voter's county elections official on or before the ~~fifth~~ *sixth* day following the election.

SEC. 6. Section 3103.7 is added to the Elections Code, to read:

3103.7. (a) Not later than 30 days following the certification of an election held within his or her jurisdiction, an elections official shall report to the Secretary of State all of the following regarding special absentee voters, as defined in subdivision (b) of Section 300:

(1) The total number of special absentee ballots for which an application was received for the election, including those with permanent vote by mail status.

(2) The total number of special absentee ballots delivered by the elections official for the election.

(3) The total number of voted special absentee ballots received by the elections official for the election.

(4) The total number of voted special absentee ballots received by the elections official for the election prior to 8 p.m. on election day.

(5) The total number of voted special absentee ballots received by the elections official for the election after 8 p.m. on election day ~~but before the fifth~~ *through the sixth* day following the election.

(6) The total number of voted special absentee ballots received by the elections official for the election ~~on and after the fifth~~ *sixth* day following the election.

(7) The total number of voted special absentee ballots received by the elections official for the election that were not postmarked on or before election day.

(b) Not later than 60 days following the certification of the election, the Secretary of State shall compile the information reported pursuant to subdivision (a) and report to the appropriate policy committees of each house of the Legislature. The report by the Secretary of State shall include the reported totals for each affected jurisdiction as well as statewide totals, whenever applicable.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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